

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Claudia Quigley	Team: Team # 7	CCRB Case #: 200818654	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/23/2008 8:00 PM	Location of Incident: 567 Armstrong Ave.	Precinct: 122	18 Mo. SOL 6/23/2010	EO SOL 6/23/2010	
Date/Time CV Reported Wed, 12/24/2008 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/30/2008 1:18 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Andrew Hillery	01031	925457	NARCBSI
3. DT3 James Malpeso	02939	932948	NARCBSI
4. DT3 Stacy Meigs	03273	931824	NARCBSI
5. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Michael Rivera	05055	927423	NARCBSI
2. DT3 Joseph Ryan	06479	929101	NARCBSI
3. POM John Brooks	19231	915057	NARCBSI
4. DT3 Steven Sposito	05103	926161	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: In front of 567 Armstrong Avenue in Staten Island, officers drew their guns.	
B. An officer	Discourtesy: In front of 567 Armstrong Avenue in Staten Island, an officer spoke obscenely to § 87(2)(b) and § 87(2)(b)	
C. Officers	Abuse: In front of 567 Armstrong Avenue in Staten Island, officers searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D. Officers	Force: In front of 567 Armstrong Avenue in Staten Island, officers used physical force against § 87(2)(b)	
E.SGT Andrew Hillery	Abuse: In front of 567 Armstrong Avenue in Staten Island, Sgt. Andrew Hillery threatened § 87(2)(b) with the use of force.	
F.DT3 James Malpeso	Discourtesy: In front of 567 Armstrong Avenue in Staten Island, Det. James Malpeso spoke obscenely to § 87(2)(b)	
G.SGT Andrew Hillery	Abuse: At the 122nd Precinct stationhouse, Sgt. Andrew Hillery authorized the strip-searched of § 87(2)(b)	
H.DT3 Stacy Meigs	Abuse: At the 122nd Precinct stationhouse, Det. Stacy Meigs strip-searched § 87(2)(b)	

Case Summary

§ 87(2)(b) filed a complaint by telephone with the Internal Affairs Bureau (IAB) on behalf of her husband, § 87(2)(b) on December 24, 2008, Log #08-58546 (encl. 7A). IAB referred the complaint to the CCRB on December 30, 2008 (encl. 8A-B). § 87(2)(b) filed a duplicate complaint at the CCRB on March 12, 2009 (encl. 9A-B).

On December 23, 2008, at about 8:00pm, Sgt. Andrew Hillery and his narcotics team, Det. Paul Fazio, Det. Michael Lopresti, Det. Stacy Meigs, Det. James Malpeso, Det. Michael Rivera, Det. Joseph Ryan, Det. Steven Sposito, and PO John Brooks scheduled a drug sale with an unidentified drug dealer to take place at 567 Armstrong Avenue in Staten Island. § 87(2)(b) was in the area and he parked his car at the location. The officers approached the car and Det. Rivera recognized § 87(2)(b) as wanted under a parole warrant. The interaction that ensued resulted in the following allegations:

- **Allegation A – Abuse of Abuse of Authority: In front of 567 Armstrong Avenue in Staten Island, officers drew their guns.**
- **Allegation B – Discourtesy: In front of 567 Armstrong Avenue in Staten Island, an officer spoke obscenely to § 87(2)(b) and § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C: Abuse of Authority: In front of 567 Armstrong Avenue in Staten Island, officers searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D – Force: In front of 567 Armstrong Avenue in Staten Island, officers used physical force against § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E – Abuse of Abuse of Authority: In front of 567 Armstrong Avenue in Staten Island, Sgt. Andrew Hillery threatened § 87(2)(b) with the use of force.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation F – Discourtesy: In front of 567 Armstrong Avenue in Staten Island, Det. James Malpeso spoke obscenely to § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation G – Abuse of Abuse of Authority: At the 122nd Precinct stationhouse, Sgt. Andrew Hillery authorized the strip-searched of § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

- **Allegation H – Abuse of Abuse of Authority: At the 122nd Precinct stationhouse, Det. Stacy Meigs strip-searched** § 87(2)(b)

§ 87(2)(g)

IAB was notified of § 87(2)(b)'s allegation of improper touch via CCRB spin off case #200904965.

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) filed a complaint on behalf of § 87(2)(b) but she was not present during the incident, therefore, she was not interviewed by the CCRB.

Victim: § 87(2)(b)

- § 87(2)(b)

IAB Testimony

Sgt Gregory Accomando from IAB interviewed § 87(2)(b) on December 24, 2009 (encl. 7A). Sgt. Accomando called the command center to report that § 87(2)(b) was interviewed at the 120th Precinct and § 87(2)(b) stated that he was searched in front of 567 Armstrong Avenue in Staten Island. § 87(2)(b) complained that his buttocks were spread during the search. § 87(2)(b) made no allegation that anything was stuck in or around the stated area. § 87(2)(b) made no allegation of injury. § 87(2)(b) complained of redness on his wrists by the handcuffs and admitted to resisting arresting.

CCRB Testimony

§ 87(2)(b) was interviewed at § 87(2)(b) on March 27, 2009 (encl. 10B). On December 23, 2008, § 87(2)(b) was driving a rental car that he borrowed from a friend of his girlfriend, § 87(2)(b). He did not know the friend's name. § 87(2)(b) went to the Staten Island Mall with his other girlfriend, § 87(2)(b) their § 87(2)(b) old child, § 87(2)(b) and § 87(2)(b) § 87(2)(b) old daughter, § 87(2)(b). They left Kmart at approximately 8:00pm, made a U turn at Amboy Road and Armstrong Avenue, and pulled over to check on the baby. A green Hyundai, a black jeep, and a big black van pulled over along side him. About eight plainclothes officers jumped out of the cars and approached § 87(2)(b)'s car. All the officers were male and white, except for a white female.

PO1, identified by the CCRB as Sgt. Andrew Hillery, opened the driver's door, pulled § 87(2)(b) out of the car, handcuffed him, and search his pockets. He was 5'7 and stocky. Multiple officers looked in the front of the car and the back, opened the baby's powder milk and bottle, and emptied the contents. They opened the trunk, and opened the shopping bags, while asking § 87(2)(b) "Where are the drugs?" § 87(2)(b) told the officers he did not have any drugs. While PO2, identified by the CCRB as Det. James Malpeso, was holding § 87(2)(b) PO3, identified by the CCRB as Det. Steven Sposito, patted § 87(2)(b) and then pulled § 87(2)(b)'s pants and underwear away from § 87(2)(b)'s body and placed his hand against § 87(2)(b)'s buttocks and in between his buttocks. He was shorter than the other officers and medium build. Det. Sposito then told Sgt. Hillery that § 87(2)(b) had something.

The officers escorted § 87(2)(b) to the van, but § 87(2)(b) refused to get inside and continued asking the officers why he was being arrested. About seven officers were surrounding him and trying to get him inside the van. § 87(2)(b) stated that the officers, “Started banging his head against the van, punched him on his face, and did everything in their power to get him in the van, but he did not get in the van.” § 87(2)(b) could not see who was beating him because his back was to the officers. § 87(2)(b) did not receive any injuries and did not have to go the hospital. Sgt. Hillery told § 87(2)(b) that if he did not get in the van he was going to pepper spray him and placed him in a straight jacket. After a second warning § 87(2)(b) stepped into the van. § 87(2)(b) was arrested as well and placed in another car. A female officer got into his car and drove it away with his daughters.

§ 87(2)(b) was transported to the stationhouse and brought into a bathroom. The officers at the scene entered the bathroom as well. Det. Sposito put § 87(2)(b)'s pants down and told him to squat. § 87(2)(b) complied and Det. Sposito grabbed § 87(2)(b) by the buttocks and spread them. § 87(2)(b) then felt Det. Sposito's thumb against his anus. § 87(2)(b) moved away from him and asked him what he was doing. Det. Sposito told him that he have to squat and stay in that position for three to four minutes. § 87(2)(b) told him that he did not have anything and squatted again. However, Det. Sposito grabbed his buttocks again and § 87(2)(b) moved away. The officers told him he had to squat and § 87(2)(b) told them that he already did it twice, he did not have anything, and Det. Sposito was grabbing him, and touching things he did not have to touch.

§ 87(2)(b) squatted a third time and when Det. Sposito grabbed him as before, § 87(2)(b) twisted his body to face all the officers and told them, “Look I don't have anything, what are you trying to do to me?” Det. Sposito looked at Sgt. Hillery and Sgt. Hillery shook his head and told Det. Sposito to put § 87(2)(b)'s pants up and take him out of the bathroom. § 87(2)(b) was charged with drug sale, assault, resisting arrest, and disorderly conduct. According to § 87(2)(b) an officer, may have been Det. Malpeso, told him at the precinct that they did not get him on drugs, but pointed to a little scratch on his head, and told § 87(2)(b) that he was being charge with assaulting an officer. § 87(2)(b) was unable to provide detailed descriptions for the officers.

Arrest Photo

There do not appear to be any injuries or bruises on § 87(2)(b)'s face. He has a half an inch long line on his forehead that appears to be an old scar (encl. 11A).

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a phone statement on March 12, 2009 (encl. 9B) and was interviewed at the CCRB on April 7, 2009 (encl. 12B). Any discrepancies in her statement were noted. On December 23, 2008, § 87(2)(b) went shopping to the Staten Island Mall with § 87(2)(b) their child, § 87(2)(b) and § 87(2)(b) daughter, § 87(2)(b). They left the mall at approximately 8:00pm. § 87(2)(b) made a U turn at Amboy Road and Armstrong Avenue and pulled over because baby was crying and needed her formula. Four or five unmarked cars began driving towards them from different directions with their high beams flashing. About six plainclothes officers jumped out of the cars and approached § 87(2)(b)'s car with their guns drawn, and holding flashlights. All the officers were white males.

PO1, an unidentified officer, approached the passenger car and § 87(2)(b) heard him say, “Get the fuck out of the car.” He had blond spiky hair, he was about 5’7” tall, and about 210lbs, and he had a gray hooded sweater, a brown best, and jeans. When the officers saw the children in the car, PO2, identified by § 87(2)(b) as Det. Michael Rivera, instructed the officers to put their guns away. He was about 6’tall, slim, and he had black hair. The officers told the civilians to step out of the car and asked § 87(2)(b) and § 87(2)(b) what they were doing. They responded that they were going Christmas shopping. The officers said they had received a call that the civilians were going to buy drugs. PO1 handcuffed § 87(2)(b) and walked her to the driver’s side of the vehicle. Two officers began searching the car, looking around the driver and passenger seat, in the back, removing the baby’s car seat, and in the trunk, opening all the gifts. One of the officers searching the car, PO3, identified by § 87(2)(b) as Det. Sposito, was short, had on glasses. He poured out the baby’s milk and the body powder.

Det. Rivera searched § 87(2)(b) and she requested a female officer. Det. Rivera told her that if she did not cooperate ACS would take her children. Det. Rivera then searched § 87(2)(b) around the bra band and told her, “You know what we are looking for, so just give up or you are going to jail and your kids are going to ACS.” § 87(2)(b) told the officer that they could search him because he did not have anything and a search of § 87(2)(b) did not yield anything. The officers told the civilians that they were being taken to the precinct and her children were going to ACS. The officers then escorted § 87(2)(b) towards a van. § 87(2)(b) observed that about three or four officers were pushing § 87(2)(b) and banged his head against the van about three times. § 87(2)(b) identified these officers during a photo presentation as Sgt. Hillery, Det. Rivera, and PO John Brooks. They got § 87(2)(b) into the van and placed § 87(2)(b) in a patrol car.

§ 87(2)(b) and § 87(2)(b) were transported to the stationhouse. § 87(2)(b) was taken to a small room and when he returned about then minutes later, § 87(2)(b) told her that they strip searched him and made him squad about three times. He also told her that an officer tried to put his hand by his anus. In a prior statement § 87(2)(b) stated that her boyfriend had his pants around his knees. He was then strip-searched and made to squat five times. He was also touched about the buttocks. § 87(2)(b) asked where her children were and they told her that were in another room. § 87(2)(b) was escorted to a bathroom by a female officer identified by § 87(2)(b) during a photo presentation as Det. Stacy Meigs. Det. Meigs asked § 87(2)(b) to put down her pants and underwear and asked her to squad. When nothing was recovered, she got dress and was escorted out of the room. The officers left § 87(2)(b) go a few hours later with her two children and they released § 87(2)(b)s car.

§ 87(2)(b) stated that § 87(2)(b) was arrested for assaulting one of the officers. He is alleged to have kicked an officer in the head with a boot but this never happened and the officer was not injured. The assault charges were dropped but § 87(2)(b) is currently incarcerated in Rikers as he had a warrant for a parole violation. He is supposed to be released at the end of March. § 87(2)(b) was told to make a CCRB complaint by her lawyer.

A Photo Identification Procedure was conducted with § 87(2)(b) at the CCRB on August 3, 2009 (encl. 13A-P). § 87(2)(b) was shown photos of Staten Island Narcotics Team plus four filler with the following results:

- Sgt. Andrew Hillery was at the location and he was one of the officers that escorted § 87(2)(b) boyfriend, § 87(2)(b) to the van, and caused a bruise to his head.
- Det. Paul Fazio was at the location and drove § 87(2)(b) to the stationhouse in a four door gold car.
- § 87(2)(b) did not recognize the female officer serving as a filler.

- Det. Michael Lopresti was at the location, but § 87(2)(b) could not remember him doing anything in particular.
- § 87(2)(b) picked out the male officer filler and stated that the male officer may have been at the location.
- Det. Stacy Meigs was at the location and was the female officer that strip searched § 87(2)(b) at the stationhouse.
- Det. James Malpeso threatened § 87(2)(b) with calling the Administration of Children Services and placing her in jail with a felony charge. He did not allow her to call anybody to come to the location to pick up the children and was disrespectful. § 87(2)(b) stated that this officer told her, “You are not fucking getting no phone call, no one is coming to get your fucking kids, you are getting in the system, you are going to jail for a year and a felony, you got the drugs, give me the drugs, you are fucking stupid, you are going to sit there and go to jail for this asshole.” § 87(2)(b) did not mention these allegations during her original CCRB complaint, her CCRB interview, or in her notice of claim.
- Det. Michael Rivera searched the car and also threatened § 87(2)(b) with calling the Administration of Children Services. He removed the baby from the car seat and searched around the car seat. He was also one of the officers that escorted § 87(2)(b) to the van and caused a bruise to his head. He searched § 87(2)(b) at the location, while another officer stood near by.
- § 87(2)(b) did not recognize Det. Joseph Ryan.
- § 87(2)(b) picked out the male officer filler and stated that the male officer may have been at the location.
- Det. Steven Sposito searched the car, searched § 87(2)(b) at the location, and threw out the baby’s formula. § 87(2)(b) observed this officer escort § 87(2)(b) to the bathroom while wearing latex gloves. He also was one of the officers that drove § 87(2)(b) to the stationhouse. He gave § 87(2)(b) the car keys and let her go.
- § 87(2)(b) did not recognize the female officer serving as a filler.
- PO John Brooks was one of the officers that searched the car and that escorted § 87(2)(b) to the van and caused a bruise to his head.

NYPD Statement(s):

On December 23, 2008, Det. Michel Rivera, Det. James Malpeso, Det. Stacy Meigs, Det. Joseph Ryan, and Det. Steven Sposito were assigned to the narcotics team with Sgt. Andrew Hillery as their supervisor. They worked 1600 x 0033 hours, were dressed in plainclothes, and were assigned to unmarked vehicles. Det. Rivera was the arresting officer and Det. Malpeso and Det. Sposito were assigned to the prisoner van.

According to the officers interviewed, on December 23, 2008, the team was conducting an investigation into a known drug dealer. The officers kept the name confidential due to an ongoing investigation. At 8:00pm Det. Ryan made a controlled call requesting crack cocaine to a phone number provided to the team by a confidential informant. The officers were in the vicinity of 567 Armstrong Avenue in Staten Island; therefore, they asked the unknown male that answered the phone to drop the package at that location. This area is residential and there is some drug activity around the area. The officers went to the location and spread out. A few minutes later the male called back and informed the officers that he was going to be there in a few seconds. Det. Ryan informed Sgt. Hillery that from the sound and pattern of the voice, the male was most likely black.

Subject Officer: SGT. ANDREW HILLERY

- Sgt. Hillery is a § 87(2)(b) old white male who is 5’7” tall, weighs 180 pounds, and has brown hair and hazel eyes.

Memo Book

Sgt. Hillery noted in his memo book that at 8:10pm § 87(2)(b) DOB § 87(2)(b) was arrested along with § 87(2)(b) § 87(2)(b). § 87(2)(b) arrest was voided and § 87(2)(b) was strip searched with negative results (encl. 14A-C).

Line of Duty Injury Report

Sgt. Hillery noted that while apprehending § 87(2)(b) he became physically combative and violently resisted arrest. While being placed in the van, § 87(2)(b) head butted Det. Malpeso, knocking him into the van which caused a laceration to his head that required six staples (encl. 15A).

CCRB Testimony

Sgt. Andrew Hillery was interviewed at the CCRB on July 1, 2009(encl. 16B). According to Sgt. Hillery, after placing the call to the unknown drug dealer, a car pulled up in front of 567 Armstrong Avenue. A black male driver, identified as § 87(2)(b) looked at the address of the house and the area around him. At this point the team moved in and Sgt. Hillery approached the driver’s side and asked § 87(2)(b) to step out of the car and for his name. The officers did not have their guns out or speak discourteously to the civilians. § 87(2)(b) cooperated with the requests. At his time Det. Michael Rivera told Sgt. Hillery that § 87(2)(b) was wanted and that his face was posted at the stationhouse. Sgt. Hillery handcuffed § 87(2)(b) and he and the other officers asked if he had any contraband. § 87(2)(b) denied having anything.

Sgt. Hillery then searched § 87(2)(b) for any weapons because the poster indicated that § 87(2)(b) had a parole warrant and was known to carry guns. Sgt. Hillery did not touch § 87(2)(b)’s buttocks and did not make skin to skin contact with § 87(2)(b)’s backside. The officers walked to the passenger side where a black female was sitting. She was identified as § 87(2)(b). There was a five months old baby and a five year old child sitting in the back seat. There were also multiple packages in the car. The officers ordered § 87(2)(b) out of the car, handcuffed her, searched her, and began to search the car for any drugs or weapons. Sgt. Hillery explained that the car was searched because of the potential danger to the children, who were left in the car, as the car was transported to the stationhouse.

§ 87(2)(b) began screaming and threatening the officers, and well as saying, “Punch me in the face.” Sgt. Hillery asked him to be quiet, but § 87(2)(b) continued yelling, so Sgt. Hillery instructed his officers to put § 87(2)(b) in the van. The officers began walking § 87(2)(b) to the van and he began yelling, “Don’t go in my ass.” Sgt. Hillery did not know why he was doing this except to act disorderly. At one point § 87(2)(b) began cursing at an unidentified civilian walking his dogs and the civilian screamed back at him. § 87(2)(b) was resisting the officers’ efforts to take him to the van by leaning backwards. Eventually the officers arrived at the van door and asked § 87(2)(b) to take the step up and go inside the van. § 87(2)(b) took the step, but then turned around, began screaming, and kicked Det. James Malpeso, causing him to hit his head on the van. Sgt. Hillery and Det. Malpeso grabbed his legs and the officers forced § 87(2)(b) into the van. § 87(2)(b) was placed in another car and Sgt. Hillery instructed one his officers to drive the car with the children to the stationhouse.

Once at the stationhouse, Sgt. Hillery instructed his officers to strip search § 87(2)(b). Sgt. Hillery was present, along with Det. Malpeso and Det. Steven Sposito. No contraband was found. None of the officers touched § 87(2)(b)’s buttocks or anus. Sgt. Hillery did not hit § 87(2)(b)’s head against the door

frame, did not punch him, and did not threaten him with pepper-spray and neither did any of his officers. Sgt. Hillery did not instruct any of his officers to strip search § 87(2)(b)

Subject Officer: DET. MICHAEL RIVERA

- Det. Rivera is a § 87(2)(b) old Hispanic male who is 5'11" tall, weighs 150 pounds, and has brown hair and brown eyes.

Memo Book

Det. Rivera noted in his memo book that at 8:10pm § 87(2)(b) and § 87(2)(b) were arrested at 567 Armstrong Avenue (encl. 17A-C).

Arrest Report

"At time and place of occurrence, § 87(2)(b) did agree to sell a quantity of a controlled substance to officers for US currency. Upon stop, § 87(2)(b) became physically combative and did kick and head butt an officer causing a laceration to the officer's forehead" (encl. 19A-B).

Criminal Court Complaint

Det. Rivera noted that on December 23, 2009 he recognized § 87(2)(b) as the subject of an active parole warrant: OCA § 87(2)(b) and observed § 87(2)(b) kick Det. James Malpeso multiple times in the head, causing a laceration that required six staples (encl. 20A).

CCRB Testimony

Det. Michael Rivera was interviewed at the CCRB on May 26, 2009 (encl. 21B). According to Det. Rivera, after calling the drug dealer, a car arrived at the location at approximately 8:10pm and parked in front of 567 Armstrong Avenue. It was the only car in the block at that time. There was a female sitting in the passenger seat, later identified as § 87(2)(b) and two children sitting in the back seat. The driver, later identified as § 87(2)(b) sat there for minute or so and looked around. When he did not see anybody, § 87(2)(b) made a U-turn, and parked across the street from 567 Armstrong and sat there for a couple of more minutes. Det. Rivera approached the vehicle, at which time he noticed § 87(2)(b) who was wanted on a parole warrant. Det. Rivera remembered the information from the warrants with photos posted on the wall back at the command.

Det. Rivera told § 87(2)(b) to step out of the vehicle. § 87(2)(b) complied but when Det. Rivera proceeded to handcuff him to place him under arrest for the warrant, § 87(2)(b) became very loud and combative. § 87(2)(b) began to flail his arms, preventing Det. Rivera from handcuffing him. Eventually § 87(2)(b) was handcuffed, searched, and placed under arrest. As § 87(2)(b) was being escorted to the prisoner van he became very combative, dropping his weight and giving the officers a hard time walking. He started to yell and scream at the neighbors, saying, "Look at what they are doing." As they arrived at the van, § 87(2)(b) refused to get inside and sat on the door ledge. Several officers tried to push him in, but § 87(2)(b) resisted their efforts. He began kicking his feet, eventually kicking Det. James Malpeso in the head causing him an injury which required stitches. After two minutes of struggling, § 87(2)(b) finally got into the van and he was transported to the stationhouse. The car was also transported to the stationhouse.

Det. Rivera stated that their guns were not out and they did not scream any obscenities at the civilians. Det. Rivera did not search the car at the scene and did not see any officers searching the car at the scene. Det. Rivera did not recall what occurred between § 87(2)(b) and the officers that interacted with her, as he was handling § 87(2)(b) at the time. Det. Rivera did not know if § 87(2)(b) was strip searched. Det. Rivera stated that he did not touch § 87(2)(b)'s bare buttocks when he searched him after

handcuffing him and did not see any officers doing so. Det. Rivera did not push § 87(2)(b)'s head against the van's door and did not see any officers doing so. Det. Rivera did not punch § 87(2)(b) or threatened to pepper-spray him and did not see or heard any officers doing so. Det. Rivera did not ride in the van and when he arrived at the stationhouse he observed § 87(2)(b) by the front desk with Det. Malpeso. Det. Malpeso was bleeding from his head. Det. Rivera began the arrest paperwork and did not interact with § 87(2)(b) again. Det. Rivera did not strip search § 87(2)(b) and did not know if he was strip searched by other officers. Det. Rivera did not touch § 87(2)(b)'s anus or see any officer touching § 87(2)(b)'s anus. Det. Rivera did not re-tighten § 87(2)(b)'s handcuffs and did not see any officer doing so.

Subject Officer: DET. JAMES MALPESO

- Det. James Malpeso is a § 87(2)(b) old white male who is 5'9" tall, weighs 220 pounds, and has black hair and brown eyes.

Memo Book

Det. Malpeso noted in his memo book that at 10:00pm he was at the § 87(2)(b) for a LOD injury (encl. 22A-B).

CCRB Testimony

Det. James Malpeso was interviewed at the CCRB on June 12, 2009 (encl. 23B). According Det. Malpeso on December 23, 2008, at 8:00pm he was instructed to respond to 567 Armstrong Avenue in Staten Island with the prisoner van. Upon arriving at the location he observed that the defendant, identified as § 87(2)(b) was already in handcuffs. Det. Malpeso did not know who placed § 87(2)(b) in handcuffs. § 87(2)(b) was standing by his car. Det. Malpeso recalled seeing a female civilian at the scene as well, but he did not know if she was handcuffed. Sgt. Hillery instructed Det. Malpeso to place § 87(2)(b) in the prisoner van. Although § 87(2)(b) was calm when Det. Malpeso first arrived, as soon as he was approached by Det. Malpeso to be escorted to the van, § 87(2)(b) started acting up, yelling and moving, trying to prevent the officers from placing him inside the van. Det. Malpeso placed his arm underneath § 87(2)(b)'s arm and prompted him to move forward. Other officers were helping to move § 87(2)(b) forward at this point and they were all pulling him. There were more than two officers helping, but Det. Malpeso did not recall who exactly helped him.

§ 87(2)(b) was still screaming and a crowd began to gather. When the officers finally got to the back of the van, opened the back door, and tried to place § 87(2)(b) in the van, he refused to get inside. He was still yelling and screaming, refusing to move forward, and kicking. Once he was on the top step of the van, § 87(2)(b) refused to budge. PO Malpeso tried to place his shoulder against § 87(2)(b)'s behind to try to lift him up and push him in, but § 87(2)(b) fell and Det. Malpeso fell in the proximity of his legs. § 87(2)(b) kicked back, connecting with Det. Malpeso's head numerous times. Det. Malpeso backed away and the other officers continued struggling with § 87(2)(b) and were able to push § 87(2)(b) inside the van. After § 87(2)(b) was inside the van, he continued acting somewhat rowdy, but not as violent as before.

Det. Malpeso and PO Brooks drove the van to the 122nd Precinct stationhouse and escorted § 87(2)(b) to the front desk. Sgt. Hillery then instructed Det. Malpeso to escort § 87(2)(b) to the bathroom and strip search him. Det. Malpeso and two other officers conducted the strip search, but Det. Malpeso did not recall who the other two officers were. Sometime after, Det. Malpeso was informed by an officer that he was bleeding from the head. Det. Malpeso was instructed to go to the hospital to have his head checked. Det. Malpeso went to the § 87(2)(b) where he received six staples for a cut in his head.

Det. Malpeso did not punch § 87(2)(b) or hit his head against the door frame of the van and did not observe any officers doing so. Det. Malpeso did not observe any injuries on § 87(2)(b). Det. Malpeso did not threaten to pepper spray § 87(2)(b) or hear any officers doing so. Det. Malpeso did not use his thumb to poke § 87(2)(b)'s anus during the strip search and did not see any officers doing so. Det. Malpeso did not interact with § 87(2)(b) and did not know if she was stripped searched.

Subject Officer: DET. STACY MEIGS

- Det. Meigs is a § 87(2)(b) old white female who is 5'5" tall, weighs 145 pounds, and has brown hair and brown eyes.

Memo Book

Det. Meigs noted in her memo book that at 8:10pm § 87(2)(b) and § 87(2)(b) were arrested at 567 Armstrong Avenue (encl. 24A-C).

CCRB Testimony

Det. Stacy Meigs was interviewed at the CCRB on July 22, 2009 (encl. 25B). According Det. Meigs, on December 23, 2008, at approximately 8:10pm, the narcotics team was conducting buy and bust operations around the vicinity of 567 Armstrong Avenue in Staten Island. Soon after placing the controlled call, a car pulled up and the officers approached the car. Sgt. Hillery and Det. Rivera approached the driver's side and PO Meigs approached the passenger's side. She observed a female in the passenger seat identified as § 87(2)(b) and a baby and a young child in the back seat. Sgt. Hillery and Det. Rivera recognized the driver as § 87(2)(b) who had a warrant out for his arrest. § 87(2)(b) was removed from the vehicle and placed in handcuffs.

Det. Meigs asked § 87(2)(b) to get out of the vehicle, searched her, and placed her in handcuffs. Det. Meigs stated that § 87(2)(b) was escorted to the prisoner van. Although Det. Meigs could not see what was going on because the officers and § 87(2)(b) were at the van's rear and she was facing the van's front, she stated that she could hear § 87(2)(b) yelling and causing a commotion. Det. Meigs did not see the physical interaction between § 87(2)(b) and the officers and did not observe any officers using force against § 87(2)(b). Det. Meigs placed § 87(2)(b) in a car and she was transported by other officers to the stationhouse. Det. Meigs drove § 87(2)(b)'s car with the children to the stationhouse. She did not search the car and did not know if any of the officers searched the car at the arrest location. When she arrived at the stationhouse, she parked the car at the rear of the stationhouse and escorted the children inside. She observed § 87(2)(b) by the front desk, but did not see § 87(2)(b). Det. Meigs stated that she did not know if § 87(2)(b) was strip searched, but denied strip searching § 87(2)(b).

Subject Officer: DET. STEVEN SPOSITO

- Det. Sposito is a § 87(2)(b) old white male who is 5'4" tall, weighs 120 pounds, and has brown hair and brown eyes.

Memo Book

Det. Sposito noted in his memo book that at 8:30pm he was on his way to the stationhouse to process four arrests (encl. 26A-B).

CCRB Testimony

Det. Steven Sposito was interviewed at the CCRB on September 2, 2009 (encl. 27B). According Det. Sposito, after placing the controlled call, § 87(2)(b) arrived at the chosen location, at 567 Armstrong Avenue in Staten Island, in a vehicle occupied by a woman and a child. § 87(2)(b) was identified as the

man who agreed to sell the officers crack cocaine. He was also identified by Det. Rivera as a man who had an open warrant. § 87(2)(b)'s photo was posted in the intelligence board at the officers' command. PO Sposito did not know what kind of warrant it was and did not know how § 87(2)(b)'s phone number was obtained by Det. Ryan.

Det. Sposito and Sgt. Hillery then approached the vehicle and ordered § 87(2)(b) to step out of the vehicle. He was compliant until he was placed in handcuffs by Sgt. Hillery. At the scene officers conducted a " cursory search" of § 87(2)(b). His car was also searched at the scene, but Det. Sposito did not know by whom. Det. Sposito does not recall who searched § 87(2)(b) at the scene. Det. Sposito described § 87(2)(b)'s demeanor while in handcuffs as, "extremely violent and combative." Once in handcuffs, officers were attempting to place § 87(2)(b) in the prison van. During this attempt he was being very loud and attempting to break away from the apprehending officers. Before he was successfully placed in the van, § 87(2)(b) kicked Det. Malpeso in the head causing wounds that required stitches. It required several officers to place § 87(2)(b) in the van as he was tending his body and resisting.

Duane § 87(2)(b) was then removed to the 122nd precinct where Det. Sposito was directed by Sgt. Hillery to participate in a strip search of § 87(2)(b). This search was conducted in a bathroom of the station house by Sgt. Hillery and Det. Sposito. Because § 87(2)(b) was so violent and combative, they did not remove his handcuffs during the strip search. Det. Sposito's role in the strip search involved pulling back the waistband on § 87(2)(b)'s jeans to inspect the area. This inspection did not reveal much because § 87(2)(b) was resisting to the search by moving his body around. After this, Det. Sposito left the bathroom. The strip search lasted less than two minutes. The search did not extend to the removal of § 87(2)(b)'s clothing. Det. Sposito believes that § 87(2)(b) was removed to a cell following the search.

Regarding the allegations, Det. Sposito stated the following: At no time during the strip search did officers touch the anus of § 87(2)(b) or insert a thumb into his anus. Officers did not bang his head several times against the van's door frame. Det. Sposito does not recall any officers threatening § 87(2)(b) with the use of pepper spray or a straight jacket. At the scene, officers did not pull down the pants of § 87(2)(b). § 87(2)(b) did not draw their guns, or speak discourteously to the civilians. Det. Sposito did not know any details about § 87(2)(b)'s girlfriend arrest as his attention was solely on § 87(2)(b). He did not know if she was strip search.

NYPD Document(s)

- Narcotics Borough Staten Island Roll Call (encl. 28A) – Sgt. Hillery, Det. Meigs, Det. Malpeso, Det. Rivera, and Det. Sposito present for duty.
- Command Log (encl. 29A-B) – § 87(2)(b) was logged in at 9:35pm and her appearance was apparently normal. Her arrest was voided and she was released with her children. No strip search noted. § 87(2)(b) was logged in at 9:35pm and his appearance was apparently normal. He was strip searched at 1:22am with negative results.

Other Evidence

- Department of Correction Inmate Detail (encl. 30A-B) - § 87(2)(b) has three warrants from the New York State Department of Parole. Two for attempted robbery in the second degree and one for intimidating a victim/witness in the third degree.

Summons/Arrest for Incident and Disposition

- Case number § 87(2)(b) remains open. The next scheduled court date is § 87(2)(b). (encl. 32O-P)

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on March 23, 2009, claiming false arrest, unlawful imprisonment, failure to intervene, assault, and battery; gross negligence, negligent screening, hiring, training, retention, and supervision; intentional and negligent infliction or emotional distress, prima facie tort, conspiracy, violation of privacy, and violation and deprivation of the claimant's rights under the 4th and 14th Amendments counties and state's constitution. § 87(2)(b) is seeking monetary restitution as redress, however, among was not declare. The case is still pending a resolution (encl. 31A-D).

Civilian(s) Criminal History

§ 87(2)(b)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Civilian(s) CCRB History

- § 87(2)(b) filed a complaint on 1996, but this complaint was administratively closed (encl. 5A).
- This is the first CCRB complaint filed by § 87(2)(b) (encl. 6A).

Subject Officer(s) CCRB History

- Sgt. Hillery has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 1A).
- Det. Malpeso has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2A).
- Det. Meigs has been a member of the service for seven years and there are no substantiated CCRB allegations against her (encl. 3A).

Conclusion

Identification of Subject Officer(s)

Although § 87(2)(b) alleges that he was searched by PO2, Sgt. Hillery stated that he initially approached and searched § 87(2)(b) Det. Sposito and Sgt. Hillery stated that he, Det. Malpeso, and Det. Sposito were present during the strip search. This was corroborated by Det. Malpeso and Det. Sposito.

Investigative Findings and Recommendations

Allegations Not Pled

The CCRB found the officers credible in that they recognized § 87(2)(b) as having a warrant and had legal grounds to arrest him and the search of the civilians was incident to an arrest. Therefore, no stop or search of person allegations were pleaded. The CCRB also determined that the officers' mention of ACS was not a threat but a confirmation, given that § 87(2)(b) was under investigation at the time.

Allegation A – Abuse of Abuse of Authority: In front of 567 Armstrong Avenue in Staten Island, officers drew their guns.

Allegation B – Discourtesy: In front of 567 Armstrong Avenue in Staten Island, an officer spoke obscenely to § 87(2)(b) and § 87(2)(b)

It is in dispute whether the officers approached the civilians with their guns drawn and one of the officers told the civilians, “Get the fuck out of the car.” In her initial complaint and her CCRB interview § 87(2)(b) stated that the officers drew their guns and one officer spoke discourteously. However, in her notice of claim, § 87(2)(b) alleged that the officers pointed their guns at her specifically and she did not make any allegations of discourteous language. On the other hand, § 87(2)(b) made no allegations of guns drawn or discourteous language and the officers denied these allegations. § 87(2)(b) failed to identify the officer that allegedly spoke discourteously to her and made a discourtesy allegation against Det. Malpeso, which was not mentioned in any of her prior statements. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority: In front of 567 Armstrong Avenue in Staten Island, officers searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It is not in dispute that the officers searched the car, however, the civilians alleged that the officers searched their car without their permission. Sgt. Hillery stated that he authorized a search of the car for any drugs or weapons. Sgt. Hillery explained that the car was searched because of the potential danger to the children, who were left in the car, as the car was transported to the stationhouse. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: In front of 567 Armstrong Avenue in Staten Island, officers used physical force against § 87(2)(b)

It is not in dispute that some amount of force was used during § 87(2)(b)'s arrest. However, § 87(2)(b) alleged that the officers “Started banging his head against the van, punched him on his face, and did everything in their power to get him in the van, but he did not get in the van.” The officers stated that § 87(2)(b) was under arrest and was being escorted to the van and he did everything he could to physically resist the officers. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Abuse of Authority: In front of 567 Armstrong Avenue in Staten Island, Sgt. Andrew Hillery threatened § 87(2)(b) with the use of force.

It is in dispute whether a threat of force was used against § 87(2)(b) § 87(2)(b) alleged that while resisting the officers’ attempts to get him into the police van, an officer, later identified as Sgt. Hillery, threatened to pepper spray him and put him in a straight jacket. Sgt. Hillery and the other officer denied this allegation. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Discourtesy: In front of 567 Armstrong Avenue in Staten Island, Det. James Malpeso spoke obscenely to § 87(2)(b)

§ 87(2)(b) accused Det. Malpeso of speaking discourteously to her during a photo identification procedure. § 87(2)(g)

Allegation G – Abuse of Abuse of Authority: At the 122nd Precinct stationhouse, Sgt. Andrew Hillery authorized the strip-searched of § 87(2)(b)

§ 87(2)(b) stated that he was strip searched by Det. Sposito in the presence of Sgt. Hillery and the rest of the narcotics team. The officers corroborated § 87(2)(b)'s statement that he was strip searched. § 87(2)(g)

Allegation H – Abuse of Abuse of Authority: At the 122nd Precinct stationhouse, Det. Stacy Meigs strip-searched § 87(2)(b)

It is in dispute whether § 87(2)(b) was strip searched at the stationhouse. § 87(2)(b) alleged that she was strip searched by Det. Meigs. Det. Meigs denied this allegation and Sgt. Hillery denied approving a strip search of § 87(2)(b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date